IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 640 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH @ SHERA MOHANDAS SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 640 of 2001

MR M.R. PRAJAPATI for MR HR PRAJAPATI for Petitioner No. 1

MR S.S.PATEL, AGP for the State

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated June 16, 2001 at Annexure "E" to the petition, passed by the externing authority i.e. Deputy Commissioner of

Police, Zone 6, Ahmedabad City, by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated August 1, 2001, passed by the appellate authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show cause notice dated February 16, 2001 at Annexure "A" to the petition was issued to the petitioner under Section 59 of the Bombay Police Act ("the Act" for short), in which three allegations were made against him to the effect that he is extorting money from traders and if the traders oppose to this, he is forcibly extorting money with the help of his accomplice involved in the anti-social activities of running gambling dens and compelling them to indulge into gambling activities and the people are afraid of filing complaints against him and the activities carried on by him are detrimental to the maintenance of public order. Therefore, by issuing the show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgement.

3. The petitioner gave a reply to the said show cause notice on June 8, 2001. The externing authority after considering the reply and the material on the record passed the impugned order of externment dated June 16, 2001, in exercise of the powers conferred under Section 56(b) of the Act, by externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority under Sec. 60 of the Act, which was dismissed by the appellate authority vide order dated August 1, 2001, which has given rise to the present petition.

5. Mr. M.R. Prajapati, learned Counsel for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. He contended that the show cause notice was issued on the ground of so-called nefarious activities carried out by the petitioner, however while confirming the order of externment by the appellate authority, it is stated that on having perusal of the copy of the FIR and the statement of the

witnesses, there is a reason to believe that the petitioner is involved in nefarious activities detrimental to the maintenance of public order and therefore on the ground of non-application of mind, the order requires to be quashed and set aside. He therefore, prayed that both the impugned orders may be quashed and set aside.

6. Shri S.S.Patel, learned APP does not dispute the factual aspect that in the order passed by the appellate authority it is stated that the appellate authority has verified the copy of the FIR, but in fact there is no FIR registered and he therefore urged that appropriate order may be passed.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing authority and the order passed by the appellate authority and other papers annexed to the petition.

8. It is true that neither in the show cause notice, nor in the order passed by the externing authority there is a mention about the registration of the FIR against the petitioner. The alleged so-called nefarious activities carried on by the petitioner is on the statement of the witnesses recorded by the Police personnel. On having perusal of the order of the appellate authority, it is found that the appellate authority has observed that on having perusal of FIR and on the statement of the witnesses, there is a reason to believe that the petitioner is involved in carrying on nefarious activities which are detrimental to the maintenance of public order. In fact, there is no FIR registered against the petitioner and therefore the aforesaid observation made by the appellate authority suffers from vice of clear non-application of mind and therefore it vitiates the order of externment.

9. In view of the above, the order of externment passed by the externing authority against the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and the order passed by the appellate authority confirming the externment order suffer from vices of non-application of mind. Therefore, both the orders are required to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at

Annexures "E" and "H" to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

*/Mohandas